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GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE CHILD ADVOCATE  
LANSING

RYAN SPEIDEL  
CHILD ADVOCATE

## The Child Advocate's Report of Findings and Recommendations

*Under state law a record of the Office of the Child Advocate's is confidential, is not subject to court subpoena, and is not discoverable in a legal proceeding. Additionally, a record of the Office of the Child Advocate's is exempt from disclosure under the Freedom of Information Act.*

**Date:** August 9, 2024

**Case No.:** 2023-0294

**Child:** [REDACTED]

**DOB:** January 03, 2020

### **Summary:**

The Office of the Child Advocate (OCA) is tasked with making recommendations to positively effect change in policy, procedure, and legislation by investigating and reviewing actions of the Michigan Department of Health and Human Services (MDHHS), child placing agencies, or child caring institutions. The Child Advocate's Act, Public Act 204 of 1994, also requires the OCA to ensure laws, rules, and policies pertaining to Children's Protective Services (CPS), Foster Care, and Adoption are being followed. The OCA is an autonomous entity, separate from the MDHHS.

This OCA review included reading confidential records and information in the Michigan Statewide Automated Child Welfare Information System (MiSACWIS), service reports and social work contacts. The OCA also interviewed MDHHS staff, and reviewed law and policy surrounding adoption. Due to the confidentiality of OCA investigations, the OCA cannot disclose the identity of witnesses or complainants or sources of statements and evidence.

The objective of this review is to identify areas for improvement in the child welfare system by looking at how the case involving [REDACTED] was handled by Kalamazoo County MDHHS and Bethany Christian Services. This report is not intended to place blame, but to highlight areas of concern regarding the case; inform policy, procedure, and practice of MDHHS and partners within the child welfare system; and advocate for changes within it on behalf of similarly situated children.

This case came to the attention of the OCA after a complaint from an adoptive parent was received regarding a denied request for an adoption subsidy. The subsidy request is not allowed as it falls outside the 90-day timeframe specified by MDHHS policy and was received post adoption finalization. A full investigation was opened to determine if the Determination of Care (DOC) rates at the time of adoption were handled correctly, if an exception could be made in this case as the child's circumstances have changed, and whether policy and/or law, allowed for an appeal later in a child's life. A full OCA investigation was opened on May 22, 2023.

# Report of Findings and Recommendations

## Office of the Child Advocate

### Family History and Background:

██████████ and ██████████ are the adoptive parents of twins, ██████████, and ██████████. ██████████ and ██████████ were born premature and positive for amphetamine and methamphetamine on January 3, 2020. Their biological parents' rights were terminated, and the adoption process began. Adoption consent was granted on November 9, 2020, with a subsidy contract signed and completed on January 13, 2021. The adoption was then finalized on January 27, 2021.

### Information Discovered During the OCA Investigation:

The assigned OCA investigator reviewed the DOCs from the foster care case that were completed for ██████████ and ██████████ prior to the adoption being finalized. In November 2020, at the age of ten months, the children were diagnosed with characteristics of Cerebral Palsy, (CP).

██████████ was participating in Early On services and was receiving physical therapy at the Early Development Clinic. It was noted that his physical therapist anticipated that he would require physical therapy, occupational therapy, speech and language therapy, and behavior therapy as he grows and develops. It was further recommended that ██████████ have various tests, including a brain MRI, EG, spine and hip x-rays, along with a neuropsychological test performed around his kindergarten year, middle school, and upon entering high school to assist with school planning needs.

██████████ was receiving occupational therapy for feeding at the Early Development Clinic. He was exhibiting difficulty swallowing and had reflux. A Hammersmith Infant Neurological Exam (HINE) was completed on ██████████ on November 25, 2020. The HINE is a "simple and scorable standardized neurological examination that can be used to help identify infants between 3 and 24 months of age who have a high probability of all types of CP." The HINE assessment includes 26 items that assess "...cranial nerves, posture, movements, tone and reflexes."<sup>1</sup> ██████████'s physical therapy progress notes state ██████████'s HINE assessment scored 72 out of 78 with 0 asymmetries. The notes further document that ██████████ had lateral righting, trunk posture in sitting, suck/swallow issues, and reactions. A return visit was recommended in two to three months to determine what therapy was needed for ██████████. According to the American Academy for Cerebral Palsy and Developmental Medicine, at 9-12 months, scores of 73 or greater are regarded as optimal and those less than 73 as suboptimal.<sup>2</sup>

These progress reports for the children showed it was too early to determine a true diagnosis of Cerebral Palsy for either child.

The OCA investigator found that the DOCs completed prior to the adoption, were completed accurately based on the children's needs at the time, a Level 1 DOC rate. The OCA investigator scored the Medically Fragile DOC to determine whether it would have made a difference for the DOC rate and found that the DOC would have remained the same, a Level 1 DOC rate.

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<sup>1</sup> *The Hammersmith Infant Neurological Examination (HINE)*. (n.d.). Holland

Bloorview. <https://hollandbloorview.ca/our-services/programs-services/neuromotor-services/hammersmith-infant-neurological-examination-hine>

<sup>2</sup> *Early detection of cerebral palsy: AACPDM*. American Academy for Cerebral Palsy and Developmental Medicine. (n.d.). <https://www.aacpdm.org/publications/care-pathways/early-detection-of-cerebral-palsy>

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According to MDHHS Adoption policy AAM200, regarding support subsidy, a child must meet at least one of the following criteria:

- Be 3 years old or older.
- Being adopted by a relative within the 5th degree.
- Have a level 2 DOC (regular or medically fragile) or higher.
- Be adopted along with a sibling who meets one of the above criteria.

██████ and ██████ were only a year old at the time of their adoption and were not adopted by a relative within the 5<sup>th</sup> degree. Because of this, and the DOC levels being a level 1, not a Level 2 or higher, the children did not meet the criteria for support subsidy at the time of the adoption.

In this case, the family did not appeal the decision at the time the denial for subsidy was made but did attempt to appeal the decision in May 2021, approximately 180 days after the initial DOC. The appeal request was denied because it was made more than 90 days after the decision and post-adoption finalization. The family was informed the appeal request must be made within 90 days of the decision per MDHHS policy.

The OCA investigator attempted to have an exception to the 90-day appeal made for this case with the Adoption and Guardianship Assistance Program Office within MDHHS. The OCA investigator was told an exception was not possible and an agreement is unable to be entered post adoption finalization. It was explained to the OCA that for a child to be eligible for adoption assistance, eligibility must be determined by MDHHS, and the Adoption Assistance Agreement must be negotiated and signed by the adoptive parent(s), and the MDHHS Adoption and Guardianship Assistance Program manager or designee, prior to the final order of adoption. Additionally, the OCA was informed the DOC rates are set prior to the final order of adoption and are not subject to increases after the adoption is finalized. The DOC rate is determined when a child is in foster care and are not within the scope of the Adoption and Guardianship Assistance Program Office.

In reviewing federal and Michigan law, it is required the adoption assistance agreement is signed prior to the adoption being finalized. Federal regulations, 45 CFR 1356.40(b)(1) "require that the adoption assistance agreement be signed and in effect at the time of, or prior to, the final decree of adoption".

MCL 400.115g (1) "The department may pay a support subsidy to an adoptive parent of an adoptee who is placed in the home of the adoptive parent under the adoption code or under the adoption laws of another state or a tribal government, if all of the following requirements are met: (c) Certification is made and the adoption assistance agreement is signed by the adoptive parent and the department before the adoption is finalized."

According to MDHHS Adoption Policy, AAM 700 which states in part "... an individual has a right to request a hearing within 90 calendar days from the date of the written notice by the Adoption and Guardianship Office." The hearings would take place with The Michigan Administrative Hearing System (MAHS) which is the state's central agency that provides impartial administrative law judges to conduct administrative hearings for MDHHS.

### **Additional Research**

During the OCA's investigation, additional research was conducted surrounding adoptions and risk factors for dissolved or discontinued adoptions post finalization.

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The OCA reviewed peer reviewed articles and journals surrounding Adoption and dissolved adoptions, including the Quality Improvement Center for Adoption and Guardianship Support and Preservation's literature review titled 'Risk and Protective Factors for Discontinuity in Public Adoption and Guardianship'<sup>3</sup>. Their literature review included trying to understand risk factors that lead to post-permanency instability, referring to this as discontinuity. Their review included compiling articles, books, and resources surrounding adoption risk factors and/or protective factors relating to discontinuity. The review examined the different child factors, family factors, agency factors, and other factors, that may play a role in discontinuity.

The literature review states "...research has shown that the commitments made at the time an adoption or guardianship was finalized can become strained over time, resulting in instability, or discontinuity in care, for some children (Rolock, 2015; Rolock & White, 2016; Testa, Snyder, Wu, Rolock, & Liao, 2015). Although most children do not experience discontinuity (Child Welfare Information Gateway, 2012; Festinger, 2002; McDonald, Propp, & Murphy, 2001; Rolock, 2015), for those who do, discontinuity can have significant consequences for children who have already experienced the trauma of maltreatment and separation from primary caregivers."

This research also uncovered agency factors have limited research available examining the effectiveness of post-adoptive services, while recognizing the need for post-adoptive services has only recently been observed. It is stated "...the trauma these children have experienced does not vanish once the child is adopted, many families are just starting to reach out more for help. Post-adoptive and guardianship services are meant to promote permanence and improve family functioning (Berry et al., 2007). What research has been conducted on post-permanency services indicates that most families did not even seek such services until 5 to 7 years post-adoption; and when families do seek services, they are seeking help because of child behavior problems or parent-child conflict (Avery, 2004)."

Inadequate subsidy, receiving inadequate information before placement, inadequate preparation, and training both before and after legal finalization of adoption or guardianship, and inadequate support in general are also identified as risk factors for discontinuity.

The OCA also reviewed 'When Adoptions Fail' written by Chuck Johnson, Kristen Hamilton, and Ryan Hanlon, of The National Council for Adoption (NCFa). The article discusses the differences between adoption disruption which occurs prior to finalization, and adoption dissolution which occurs after finalization. It is noted the precise numbers for adoption dissolutions "...are not readily tracked or reported by government agencies or private entities."<sup>4</sup> The NCFa further states they "...believe that the likelihood of dissolution can be reduced through better preparation of the prospective adoptive parents to the realities of adopting children exposed to trauma and loss, enhanced support services to families after adoption, particularly to those struggling, and better matching children's needs with the ability of the prospective adoptive parents to parent them." Additionally, "Over the last few decades, changes in adoption practice and public policy have contributed to the trend of a larger percentage of adoptive placements being older children, children

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<sup>3</sup> Faulkner, M., Adkins, T., Fong, R., Rolock, N., University of Texas at Austin, School of Social Work, University of Wisconsin-Milwaukee, Helen Bader School of Social Welfare, Children's Bureau, Spaulding for Children, University of North Carolina at Chapel Hill, Quality Improvement Center for Adoption & Guardianship Support and Preservation, & Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (2016). *Risk & Protective factors for discontinuity in public adoption and guardianship*. [https://qic-ag.org/wp-content/uploads/2017/02/FinalLitReview\\_2-15-17.pdf](https://qic-ag.org/wp-content/uploads/2017/02/FinalLitReview_2-15-17.pdf)

<sup>4</sup> National Council for Adoption. (2023, December 13). *When adoptions fail - National Council for Adoption*. <https://adoptioncouncil.org/blog/when-adoptions-fail/>

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with medical and cognitive special needs, sibling group placements, and children who have experienced trauma. Preparation and training of prospective adoptive parents is a key factor in ensuring they have realistic expectations and are equipped to meet the challenges that may arise when they become parents. Working to ensure parents and professionals have accurate information about the child's social and medical history will allow for better matching, preparation, and meeting children's needs. Ongoing post adoption support and education are also crucial ways of ensuring that the parents are informed as to how to meet the needs of their children as they develop. It is necessary that pre- and post-adoption training include an understanding of trauma-informed parenting, issues pertaining to grief and loss, and issues pertaining to attachment.”

### Michigan Law

The OCA also reviewed Michigan law surrounding adoption and adoption assistance, specifically MCL 400.115t.

MCL 400.115t pertains to redetermined adoption assistance, requests, requirements, etc. concerning children adopted from foster care between the ages of 0 and 18 that were finalized after January 1, 2015. MCL 400.115t states:

- (1) If sufficient funds are appropriated in the department's annual budget and subject to subsection (4), beginning January 1, 2015, the department shall pay redetermined adoption assistance to an adoptive parent of an adoptee who is placed in the adoptive parent's home under the adoption code or under the adoption laws of another state or a tribal government, if the adoptive parent requests redetermined adoption assistance and both of the following requirements are met:
  - (a) The department has certified that the adoptee requires extraordinary care or expense due to a condition the cause of which existed before the adoption was finalized.
  - (b) Certification is made before the adoptee's eighteenth birthday.
- (2) If the department denies or the adoptive parent disagrees with the certification, the adoptive parent may request a hearing through an administrative law judge in a manner consistent with the rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (3) Redetermined adoption assistance does not affect or duplicate any original adoption assistance agreement that may be in place at the time that redetermined adoption assistance eligibility is requested. Redetermined adoption assistance shall be determined without regard to the income of the adoptive parent and shall be based on 1 or more of the following for which extraordinary care is required of the adoptive parent or an extraordinary expense exists in excess of a support subsidy:
  - (a) A physically disabled child for whom the adoptive parent must provide measurably greater supervision and care.
  - (b) A child with special psychological or psychiatric needs that require extra time and a measurably greater amount of care and attention by the adoptive parent.

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- (c) A child requiring a special diet that is more expensive than a normal diet and that requires extra time and effort by the adoptive parent to obtain and prepare.
  - (d) A child whose severe acting out or antisocial behavior requires a measurably greater amount of care and attention of the adoptive parent.
  - (e) Any other condition for which the department determines that extraordinary care is required of the adoptive parent or an extraordinary expense exists.
- (4) An adoptive parent who has an adoption assistance agreement signed and in effect before January 1, 2015 may request redetermined adoption assistance under this section in the same manner as provided in this section beginning January 1, 2015 but not after March 31, 2015.
  - (5) An adoptive parent may only request 1 redetermined adoption assistance certification to be made under subsection (1) or (4) per adoptee placed in the adoptive parent's home.
  - (6) An adoptive parent of an adoptee who was adopted from foster care between the ages of 0 and 18 and whose adoption was finalized after January 1, 2015 may request redetermined adoption assistance under this section.

### **Findings:**

#### Introduction:

The Child Advocate shall prepare a report of the factual findings of an investigation and make recommendations to the department or the child placing agency if the Child Advocate finds one or more of the following:

- a) A matter should be further considered by the department or the child-placing agency.
- b) An administrative act or omission should be modified, canceled, or corrected.
- c) Reasons should be given for an administrative act or omission.
- d) Other action should be taken by the department or the child-placing agency.

The Child Advocate believes the findings should be further considered by the department, and additional actions by MDHHS and other child welfare partners are necessary to aide adoptive families with obtaining the necessary services and care required to meet the child's needs post-adoption, in attempt to avoid failed adoptions.

#### Findings:

- 1. The Child Advocate finds MCL 400.115t allows adoptive families to make a one-time request for redetermined adoption assistance concerning children ages 0-18 adopted from foster care finalized after January 1, 2015, if sufficient funds are appropriated in the department's annual budget and the department has certified that the adoptee requires extraordinary care or expense due to a condition the cause of which existed before the adoption was finalized. The redetermined adoption assistance is based on one or more of the following for which extraordinary care is required of the adoptive parent or an extraordinary expense exists in excess of a support subsidy:
  - (a) A physically disabled child for whom the adoptive parent must provide measurably greater supervision and care.

## Report of Findings and Recommendations Office of the Child Advocate

- (b) A child with special psychological or psychiatric needs that require extra time and a measurably greater amount of care and attention by the adoptive parent.
  - (c) A child requiring a special diet that is more expensive than a normal diet and that requires extra time and effort by the adoptive parent to obtain and prepare.
  - (d) A child whose severe acting out or antisocial behavior requires a measurably greater amount of care and attention of the adoptive parent.
  - (e) Any other condition for which the department determines that extraordinary care is required of the adoptive parent, or an extraordinary expense exists.
2. The Child Advocate finds the Redetermined Adoption Assistance Program has not been historically funded in the state's annual budget. The OCA learned this information from the Adoption and Guardianship Assistance Office and MDHHS policy. Thus, the Adoption and Guardianship Assistance Program Office has not accepted applications for redetermined adoption assistance as a result. MDHHS policy goes further and states:
- a. AAM 410: "The Redetermined Adoption Assistance Program was created by law that has not yet been funded by the state budget office. The Redetermined Adoption Assistance Program is subject to state legislative appropriations of sufficient funds. The amount of payment or continuation of payment is subject to adjustment by the Michigan Department of Health and Human Services (MDHHS) due to changes in the legislative appropriations of funds."
3. The Child Advocate finds the Redetermined Adoption Assistance Program is the only avenue for families to receive additional financial assistance in caring for children adopted from foster care after an adoption is finalized.
4. The Child Advocate finds that children who are adopted from foster care can develop additional needs that are not known prior to the finalization of an adoption and the original DOC but are the result of trauma and/or instances that occurred prior to adoption.

### **Recommendation(s):**

1. The Child Advocate recommends MDHHS be provided funding for the Redetermined Adoption Assistance Program.
2. The Child Advocate recommends once funding is appropriated for the Redetermined Adoption Assistance Program, MDHHS comply with the requirements outlined in MCL 400.115t.

Under authority pursuant to The Child Advocate's Act, [MCL 722.903](#), the OCA respectfully submits this report of findings and recommendations.

Children adopted from foster care have endured trauma, and in an effort to prevent failed adoptions, these recommendations must be further considered by MDHHS and the Governor. These recommendations may effectuate positive change and can improve the lives of similarly situated children involved in Michigan's child welfare system.

**Report of Findings and Recommendations  
Office of the Child Advocate**

Before publishing, MDHHS has 60 days to provide a written response to this report in defense or mitigation of the action. The published report will include any statement of reasonable length made to the OCA by MDHHS.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ryan Speidel', is positioned to the left of a vertical yellow line.

Ryan Speidel, Michigan's Child Advocate  
Office of the Child Advocate  
111 S. Capitol Avenue  
Lansing, Michigan 48933





STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

GRETCHEN WHITMER  
GOVERNOR

ELIZABETH HERTEL  
DIRECTOR

October 11, 2024

Ryan Speidel, Director  
Office of Child Advocate  
111 S. Capitol Avenue  
Lansing, Michigan 48933

Dear Mr. Speidel:

The following is the Michigan Department of Health and Human Services (MDHHS) response to the findings and recommendations from the Office of Child Advocate (OCA) Report of Findings and Recommendations regarding [REDACTED].

This report contains confidential information from a Children's Protective Services file. The Michigan Child Protection Law [MCL 722.627, section 7(3)] prohibits the release of this information to any individual/entity not authorized under Section 7(2) of the law. Pursuant to Section 13(3), release of this confidential information to an unauthorized individual/entity may subject you to criminal and/or civil penalties.

Findings:

1. The Child Advocate finds MCL 400.115t allows adoptive families to make a one-time request for redetermined adoption assistance concerning children ages 0-18 adopted from foster care finalized after January 1, 2015, if sufficient funds are appropriated in the department's annual budget and the department has certified that the adoptee requires extraordinary care or expense due to a condition the cause of which existed before the adoption was finalized. The redetermined adoption assistance is based on one or more of the following for which extraordinary care is required of the adoptive parent or an extraordinary expense exists in excess of a support subsidy:
  - (a) A physically disabled child for whom the adoptive parent must provide measurably greater supervision and care.
  - (b) A child with special psychological or psychiatric needs that require extra time and a measurably greater amount of care and attention by the adoptive parent.
  - (c) A child requiring a special diet that is more expensive than a normal diet and that requires extra time and effort by the adoptive parent to obtain and prepare.

- (d) A child whose severe acting out or antisocial behavior requires a measurably greater amount of care and attention of the adoptive parent.
- (e) Any other condition for which the department determines that extraordinary care is required of the adoptive parent, or an extraordinary expense exists.

**MDHHS Response to Finding 1: Agree.**

2. The Child Advocate finds the Redetermined Adoption Assistance Program has not been historically funded in the state's annual budget. The OCA learned this information from the Adoption and Guardianship Assistance Office and MDHHS policy. Thus, the Adoption and Guardianship Assistance Program Office has not accepted applications for redetermined adoption assistance as a result. MDHHS policy goes further and states:
  - a. AAM 410: "The Redetermined Adoption Assistance Program was created by law that has not yet been funded by the state budget office. The Redetermined Adoption Assistance Program is subject to state legislative appropriations of sufficient funds. The amount of payment or continuation of payment is subject to adjustment by the Michigan Department of Health and Human Services (MDHHS) due to changes in the legislative appropriations of funds."

**MDHHS Response to Finding 2: Agree.**

3. The Child Advocate finds the Redetermined Adoption Assistance Program is the only avenue for families to receive additional financial assistance in caring for children adopted from foster care after an adoption is finalized.

**MDHHS Response to Finding 3: Families may apply for other public assistance programs such as Family Support Subsidy (MCL 330.1156), Medical Subsidy (MCL 400.115h), Serious Emotional Disturbance Waiver, and Children's Special Health Care Services.**

4. The Child Advocate finds that children who are adopted from foster care can develop additional needs that are not known prior to the finalization of an adoption and the original DOC but are the result of trauma and/or instances that occurred prior to adoption.

**MDHHS Response to Finding 4: Agree.**

**Recommendation(s):**

1. The Child Advocate recommends the legislature provides additional funding to ensure that MDHHS receives capital for the Redetermined Adoption Assistance Program as outlined in MCL 400.115t. The funding allocation should consider the necessary services to assist Michigan's adoptive families requiring care redetermination, as well as sufficient staffing within MDHHS to effectively support these families. Additionally, it is advised that this program be designated as a specific line item in the MDHHS budget to secure funding, given that it has not received financial support since its establishment in 2015.

**MDHHS Response to Recommendation 1: Agree.**

3. The Child Advocate recommends once funding is appropriated for the Redetermined Adoption Assistance Program, MDHHS comply with the requirements outlined in MCL 400.115t.

**MDHHS Response to Recommendation 2: Agree.**

Thank you for the opportunity to respond to this Report of Findings and Recommendations. If you have questions or concerns, please feel free to contact me.

Sincerely,



Demetrius Starling  
Senior Deputy Director  
Children's Services Administration